

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/28/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-013261

FILED: \_\_\_\_\_

CITY OF PHOENIX

L MICHAEL HAMBLIN

v.

CITY OF PHOENIX EMPLOYMENT RELAT, WILLIAM R BROWN  
et al.

AMERICAN FEDERATION OF STATE  
COUNTY AND  
200 W WASHINGTON ST  
PHOENIX AZ 85003  
ROSEANN SHAWIAK  
3431 W THUNDERBIRD  
#13-168  
PHOENIX AZ 85053

MINUTE ENTRY

This court has special action jurisdiction pursuant to Rule 4(b), Rules of Procedure for Special Actions, and will accept special action jurisdiction to resolve a purely legal question of statutory interpretation.<sup>1</sup> The exercise and acceptance of special action jurisdiction in this case by an appellate court is highly discretionary,<sup>2</sup> and therefore, the decision to accept jurisdiction encompasses a variety of determinants.<sup>3</sup> Special

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<sup>1</sup> Welch-Doden v. Roberts, 202 Ariz. 201, 42 P.3d 1166, 100 A.L.R.5th 669 (App. 2002); Mendez v. Robertson, 202 Ariz. 128, 42 P.3d 14 (App. 2002).

<sup>2</sup> Blake v. Schwartz, 202 Ariz. 120, 42 P.3d 6 (App. 2002); Haas v. Colosi, 202 Ariz. 56, 40 P.3d 1249 (App. 2002).

<sup>3</sup> State v. Jones ex rel. County of Maricopa, 198 Ariz. 18, 6 P.3d 323 (App. 2000).

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action jurisdiction by an appellate court is appropriate where an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again.

Additionally, special action jurisdiction may be assumed to correct a plain and obvious error committed by a lower court or administrative agency,<sup>4</sup> and may be considered when there is no equally plain, speedy, or adequate remedy by way of appeal.<sup>5</sup>

In this matter special action jurisdiction will be exercised to resolve a purely legal question concerning the jurisdiction of an administrative body, the Phoenix Employment Relations Board (hereinafter "PERB"), which was created by the Meet and Confer Ordinance, Phoenix City Code (hereinafter "PCC") §2-209 to 2-221, in 1976.

On April 11, 2002, the City of Phoenix Neighborhood Services Dept. terminated the employment of Real Party in Interest, RoseAnn Shawiak, for unsatisfactory performance; Shawiak had been hired in a temporary classification that was funded by a federal grant. Shawiak felt she had been terminated for having filed a grievance against the City of Phoenix (hereinafter "City") four months earlier. As a result, the American Federation of State, County, and Municipal Employees, Local 2960 (hereinafter "Local 2960"), filed an unfair labor practice charge (hereinafter "CA-179"), on behalf of Shawiak, with defendant PERB.

On May 16, 2002, the City filed a motion to dismiss - pursuant to PCC §2-210(15) - arguing that PERB did not have jurisdiction to hear the case due to Shawiak's temporary employment classification. Local 2960 counter-argued that

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<sup>4</sup> *Amos v. Bowen*, 143 Ariz. 324, 693 P.2d 979 (App. 1984).

<sup>5</sup> *Schwartz*, 202 Ariz. 120, 42 P.3d 6; *State ex rel. Romley v. Superior Court*, 198 Ariz. 164, 7 P.3d 970 (App. 2000); *Luis A. v. Bayham-Lesselyong ex rel. County of Maricopa*, 197 Ariz. 451, 4 P.3d 994 (App. 2000).

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Shawiak's status could not be temporary due to the length of time that she had been employed (22 months). PERB denied the City's motion to dismiss on June 18, 2002, and set this case for hearing on July 18-19, 2002. This hearing has been stayed pending the outcome of Plaintiff's special action in this court.

Although PERB has the authority to adjudicate charges of unfair labor practices brought by City employees, it is an administrative body that has no common law or inherent powers,<sup>6</sup> and it is strictly limited by the statute/ordinance that created the agency.<sup>7</sup>

The central issue to this matter is whether Real Party in Interest, RoseAnn Shawiak, was a "public employee," which is a requirement of the Meet and Confer Ordinance, which grants city employees the right to be represented in grievances filed against the City,<sup>8</sup> and precludes the City from interfering with City employees' rights.<sup>9</sup> Plaintiff argues that even if it had terminated Shawiak for filing a grievance, Shawiak was not a "public employee" by definition, and therefore, could not seek the protection of the Meet and Confer Ordinance. Under PCC §2-210(15), "temporary employees" are excluded from the umbrella protection of the Meet and Confer Ordinance.

Plaintiff correctly argues that the Phoenix City Charter, which derives its authority from the Arizona Constitution,<sup>10</sup> authorizes the City Manager to determine which positions are to be classified as "temporary," and which are to be classified as "public employees."<sup>11</sup> It is quite clear in the City Personnel

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<sup>6</sup> Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd., 137 Ariz. 536, 672 P.2d 201 (App. 1983); City of Phoenix v. phoenix Civil Service Board, 169 Ariz. 256, 818 P.2d 241 (App.1991).

<sup>7</sup> Schwartz v. Superior Court In and For County of Maricopa, 186 Ariz. 617, 925 P.2d 1068 (App. 1996); Dioguardi v. Superior Court In and For County of Maricopa, 184 Ariz. 414, 909 P.2d 481 (App. 1995).

<sup>8</sup> PCC §2-214(b).

<sup>9</sup> PCC § 2-220(a)(1).

<sup>10</sup> Article 13, Section 2.

<sup>11</sup> City Charter, Ch. XXV, §6(4).

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Rules<sup>12</sup> that positions such as the one occupied by Shawiak are strictly temporary and do not have disciplinary appeal rights:

Temporary" means an appointment to a position that is temporary in nature and is not an established regularly budgeted position. Such employment...is not part of the classified service.<sup>13</sup>

PERB clearly erred and exceeded its jurisdiction by denying the Motion to Dismiss. PERB has no jurisdiction to adjudicate complaints by temporary employees in cases such as this.

IT IS THEREFORE ORDERED granting the Petition for Special Action and reversing the order of PERB denying the City's Motion to Dismiss.

IT IS FURTHER ORDERED directing PERB to dismiss the Real Party in Interest's claim.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>12</sup> City Charter, Ch. XXV, §8(1).

<sup>13</sup> Regular full-time positions (City Charter, Ch. XXV, §§ 1, 3, and 5).